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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1983

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WILLARD SPAULDING,

*Petitioner,*

v.

PEOPLE OF THE STATE OF ILLINOIS,

*Respondent.*

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On Petition For Writ Of Certiorari To The Appellate  
Court Of Illinois, First Judicial District

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## RESPONDENT'S BRIEF IN OPPOSITION

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**QUESTION PRESENTED**

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Whether, after construing all evidence in a manner most favorable to the government, there is sufficient evidence of guilt, particularly of the culpable mental state of recklessness, to support petitioner's judgment of conviction for involuntary manslaughter.

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**OPINION BELOW**

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The opinion of the Appellate Court of Illinois, First Judicial District, is not reported, but a copy of that opinion is included within the appendix to the petition for writ of *certiorari* at App. 1 - App. 9.

**JURISDICTION**

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This Court maintains jurisdiction to review the judgment of the Appellate Court of Illinois, First Judicial District, pursuant to 28 U.S.C. §1257(3).

## CONSTITUTIONAL PROVISIONS INVOLVED

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### UNITED STATES CONSTITUTION AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### UNITED STATES CONSTITUTION AMENDMENT XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT

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After jury trial, petitioner was found guilty of murder. He perfected a direct appeal from conviction, but the state appellate court affirmed conviction in an opinion reported at 68 Ill.App.3d 663, 386 N.E.2d 469 (Ct.App. 1979). Leave to appeal was subsequently denied by the Illinois Supreme Court. Writ of *certiorari* was then denied by this Court in *Spaulding v. Illinois*, 444 U.S. 929 (1979). After petitioner later succeeded in obtaining a post-conviction evidentiary hearing to review a new claim in the state trial court, that court vacated judgment of conviction. At his subsequent bench trial, petitioner was acquitted of murder but found guilty of involuntary manslaughter and aggravated battery. Judgment of conviction was affirmed in the Illinois appellate court opinion which petitioner now seeks to review. After petitioner's motion for rehearing was denied, the Illinois Supreme Court declined review.

At petitioner's trial, the government produced evidence that petitioner and Richard Schmidt robbed Peter Najera and James Warsa outside a tavern in Chicago, Illinois on the evening of December 13, 1974. Petitioner held a gun to Najera's chin while Schmidt held a knife at Warsa's throat to accomplish their purpose. Petitioner suggested killing the men, but, after Najera obtained a shotgun and discharged it, police officers arrived and temporarily ended the altercation.

Petitioner and Schmidt returned to the tavern around 1:00 a.m., however. With them was petitioner's brother Cletus Eller. Warsa, Benito Najera (the victim and uncle of Peter Najera), and Frank Tavitass (Benito's son and Peter's cousin) were inside the tavern. Schmidt, testify-

ing for petitioner, admitted at trial that he had delivered a blow to Warsa to which Warsa responded. Eller and Tavitas in turn engaged in a physical altercation initiated by Eller. Petitioner testified at trial that he watched the fight and planned to intervene if and when his brother Eller became tired. Petitioner had confidence in his brother, who was wearing a cast, because, in petitioner's words, "(a) cast makes a good weapon; a person could get hurt from a cast".

Petitioner nevertheless decided to draw a gun and point it at Najera. Najera, with his hands in the air, expressed his belief that a weapon was unnecessary. Tavitas advanced toward petitioner who now aimed the gun at Tavitas. The unarmed Najera then reached toward petitioner and touched petitioner's chest. Petitioner turned, pushed Najera away, and fired the gun at Najera. After Najera fell, petitioner was seen kicking the victim. As Tavitas held his father in his arms, petitioner hit Tavitas with the gun at least a dozen times. After Tavitas fell to the floor under these blows, petitioner kicked him as well. Petitioner then finished his drink and left the tavern. Najera subsequently died as a result of the gunshot wound inflicted by petitioner.

Petitioner and his witnesses gave contradictory accounts. Although brother Cletus Eller had confessed the murder to police officers, petitioner told officers that Eller was not present during the shooting. Petitioner also attempted to persuade officers that he was at home during the robbery portion of the incident. At trial, petitioner testified that Eller had a gun in the tavern. Although Eller had earlier confessed the murder, Eller at trial claimed that the gun accidentally discharged when someone attempted to seize it during the fight. When asked at trial how he obtained possession of the gun, Eller also contradicted his



earlier statements to police officers. Witnesses noted that the right-handed Eller wore a cast covering his right arm and hand that evening, and four occurrence witnesses testified that they saw petitioner with the gun at the time the victim was shot. Police officers were called as State's rebuttal witnesses to prove petitioner's contradictory statements.

Although petitioner at trial completely denied the crime, the defense theory on appeal was that of self-defense. Petitioner now seeks review by this Court through writ of *certiorari*.

## REASONS FOR DENYING THE WRIT

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### I.

#### THE INSTANT PETITION RAISES NO SUBSTANTIAL FEDERAL CONSTITUTIONAL QUESTION.

Respondent does not concede that any federal question has been preserved for review in this Court. Because appellant failed to comply with Illinois procedural rule and did not seasonably advance a Fifth and Fourteenth Amendment due process claim in the state appellate court, there is no basis for assertion of this Court's jurisdiction. *Vachon v. New Hampshire*, 414 U.S. 478, 481 (1974) (dissenting opinion); *Beck v. Washington*, 369 U.S. 541, 552-53 (1962). When, as here, the federal constitutional issue was raised for the first time in a petition for rehearing addressed to the intermediate state court, and the state supreme court declined without opinion to hear the case, review by *certiorari* is precluded. *Herndon v. Georgia*, 295 U.S. 441, 443 (1935).

Equally important, petitioner's present challenge to the prosecution's proof of reckless conduct is essentially a state law claim. The Illinois legislature has defined the particular mental state in question<sup>1</sup>, and the Illinois courts have final authority to interpret that state's legislation. *Adderly v. Florida*, 385 U.S. 39, 46 (1966); *Garner v. Louisiana*, 368 U.S. 157, 166-70 (1961). The Illinois courts have consistently decided that the evidence adduced at petitioner's trial, that the accused had pointed a loaded firearm at another, will support a finding of reckless conduct. See, e.g., *People v. Taylor*, 54 Ill.2d 558, 301 N.E.2d 273 (Sup. Ct. 1973); *People v. Peery*, 19 Ill.App.3d 254, 311 N.E.2d 341 (Ct. App. 1974). Petitioner before this Court argues that the evidence presented at trial did not constitute proof under state law of a reckless state of mind. (Petition at 15, 22). The jurisdiction of this Court does not extend to review of exclusively state law matters, however. *Murdock v. Memphis*, 87 U.S. (20 Wall.) 590 (1875).

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<sup>1</sup> Judgment of conviction was entered for involuntary manslaughter. ILL. REV. STAT. ch. 38, §9-3(a) (1975) provides, in pertinent part, that "[a] person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly". ILL. REV. STAT ch. 38, §4-6 (1961) defines the relevant culpable mental state: "[a] person is reckless, or acts recklessly, when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation".

## II.

### THE STATE APPELLATE COURT PROPERLY DECIDED THE ISSUE OF EVIDENTIARY SUFFICIENCY.

In the state courts, appellant unsuccessfully argued that the trial court incorrectly decided two questions of fact, those of recklessness and of self-defense; as a result, appellant contended, the evidence viewed in its entirety did not, as a matter of law, support his conviction for involuntary manslaughter. Indeed, in his petition filed in this Court petitioner reargues his theory of self-defense. (Petition at 22-25).

Petitioner now challenges the reasoning of the state appellate court as well. Respondent entirely disagrees, however, with petitioner's assertion that the state appellate court affirmed petitioner's conviction on the theory that "the defendant could have been found guilty of murder" or voluntary manslaughter. (Petition at 4, 11-13). This conclusion finds no support whatsoever in the record. The trial court specifically found evidence of petitioner's reckless conduct, Tr. 766, and the appellate court, refusing to reassess witness credibility, found sufficient evidence to support judgment of conviction for involuntary manslaughter. *People v. Spaulding*, No. 81-1836, slip op. at 5-6 (Ill. App. Ct. May 19, 1983).

This Court should reject petitioner's invitation to conduct a *de novo* relitigation of factual matters. *Watts v. Indiana*, 338 U.S. 49, 50 (1949). Moreover, respondent respectfully submits that deference to state court determinations of evidentiary sufficiency is now appropriate. *Jackson v. Virginia*, 443 U.S. 307, 323 (1979) (appeal in collateral habeas corpus proceeding); *Hamling v. United States*, 418 U.S. 87, 124 (1974) (direct appeal from federal conviction).

Petitioner cannot impose a duty upon this Court to reweigh the evidence. *Glasser v. United States*, 315 U.S. 60, 80 (1942). Nor should petitioner urge this Court to engage in wholesale reassessments of witness credibility, Petition at 18-22. *United States v. Oregon Medical Society*, 343 U.S. 326, 339 (1952); *Marshall v. Lonberger*, .... U.S. ...., 103 S.Ct. 843, 851, 74 L.Ed.2d 646, 658 (1983); *Maggio v. Fulford*, .... U.S. ...., 103 S.Ct. 2261, 2262, 76 L.Ed.2d 794, 800 (1983). Finally, conflicting inferences are now deemed resolved in favor of the prosecution. *Jackson v. Virginia*, 443 U.S. at 326. The general rule of application is that, after reviewing all the evidence in a light most favorable to the prosecution, an appellate court should affirm judgment of conviction if it appears that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. at 319. See also *Burks v. United States*, 437 U.S. 1, 17 (1978) and *Glasser v. United States*, 315 U.S. at 80 (judgment of conviction on direct appeal to be affirmed if there is "substantial" evidence to support the verdict). Contrary to petitioner's assertion in his Petition at 15, a reviewing court does not scrutinize the reasoning process actually used by the factfinder. *Jackson v. Virginia*, 443 U.S. at 320, n. 13. The historical facts recounted within respondent's statement above reveal sufficient evidence to support the judgment of conviction for involuntary manslaughter entered in the state trial court.

### III.

#### **THE INSTANT PETITION IDENTIFIES NO ISSUE WORTHY OF PLENARY REVIEW BY THIS COURT.**

Petitioner's present claim advances no forensically novel question of federal constitutional law. Petitioner identifies no developing or uncertain area of the law for which this

Court could provide authoritative guidance. Indeed, the parties agree that this case is governed by this Court's prior decision in *Jackson v. Virginia*, 443 U.S. 307 (1979); resolution of the issue within the petition at bar turns on the application of venerable principles announced in the decisional law of this Court.

Equally significant, petitioner's argument addresses only the unique facts within his particular case. The issue framed by petitioner is of interest primarily to the litigants rather than to the general public. As this Court has noted in *Wilkerson v. McCarthy*, 336 U.S. 53, 66-67 (1949) (Frankfurter, J. dissenting) and in *Layne and Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393 (1923), review by writ of *certiorari* is improper in the absence of an issue of immediate public significance.

## CONCLUSION

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For these reasons, respondent respectfully submits that the petition for writ of *certiorari* should be denied.

Respectfully submitted,

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